IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 22 OF 2003

Shri Sharad Pednekar,
Major in age,
r/o M-3, Kundaikar Nagar,
Panaji-Goa. ... Applicant.

versus

1. State of Goa
through Public Prosecutor.

2. Sunil Pednekar,
major, r/o, AB-1,
Gulmohar Apts. First Floor,
Caranzalem, Goa. ... Respondents.

Mr. V. A. Lawande, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No.1 State.

Mr. J. P. Mulgaonkar, Advocate for Respondent No.2/Original Accused.

CORAM : P. V. HARDAS, J.

DATED : 5TH APRIL, 2003.

ORAL JUDGMENT(PER P. V. HARDAS, J.)

This application under Section 482 of the Code of Criminal Procedure has been filed by the Applicant/Original Complainant being aggrieved by the Order passed by the learned Judicial Magistrate, First Class, Panaji, in Private Criminal Case No.66/98/B, dated

21st November, 2001, by which the learned Judicial Magistrate, First Class, Panaji, who had partly recorded the verification statement of the Complainant, closed the evidence of the Complainant. The Applicant/Original Complainant being aggrieved by the aforesaid Order of the learned Trial Court filed Criminal Revision Application No.129/2001 before the learned Sessions Judge, North Goa, at Panaji. The learned Revisional Court by its Judgment dated 3rd August, 2002, dismissed the said revision. The learned Revisional Court found that the verification statement had been pending for more than three years and the record indicated that adjournments were sought by the Applicant/Original Complainant and the adjournments had been granted for mere asking. The Revisional Court, therefore, upheld the Order of the learned Trial Court.

2. Notice of this application was issued to the Respondents stating therein that this Criminal Miscellaneous Application would be heard finally at the stage of admission. In pursuance of the said notice, this Criminal Miscellaneous Application under Section 482 of the Code of Criminal Procedure is being decided finally at the stage of admission.

3. I have heard Mr. V. A. Lawande, learned Counsel appearing on behalf of the Applicant, Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf

of Respondent No.1/ State and Mr. J. P. Mulgaonkar, learned Counsel appearing on behalf of Respondent No.2/Original Accused.

4. With the assistance of the learned Counsel appearing on behalf of the parties, I have perused the records and proceedings of the learned Trial Court, which have been called for by me. The perusal of the records and proceedings thus disclose that the Original Complainant/Applicant had repeatedly asked for adjournments on various grounds. The records and proceedings also disclose that on as many as 11 dates the Applicant/Original Complainant was present in the Court but due to the pre-occupation of the learned Presiding Officer, the verification statement could not be recorded. A verification statement should be recorded at the earliest. In the present case, the verification statement was being recorded for the last nearly three years and four months. Be that as it may, on 21st November, 2001, the Applicant/Original Complainant had filed an application at Exh.7 praying for adjournment on the ground that the Original Complainant/Applicant was indisposed and unable to attend the Court. The learned Judicial Magistrate, First Class, Panaji by the Order impugned in this application dismissed that application and closed the partly recorded verification statement of the Applicant/Original Complainant.

5. In my considered opinion, one last chance needs to be granted to the Applicant/Original Complainant to complete the verification statement. It has been submitted by the learned Counsel appearing on behalf of the Applicant that the incomplete verification statement would be prejudicial to the case of the Applicant/Original Complainant as he would not be able to establish a prima facie case for seeking the Order of issuance of process. Therefore, in my considered opinion, though, the verification statement has remained pending for a considerable length of time, one last chance needs to be given to the Applicant/Original Complainant for the verification statement.

6. Mr. V. A. Lawande, learned Counsel appearing on behalf of the Applicant/Original Complainant has assured this Court that he would not seek any adjournments before the learned Trial Court on any grounds whatsoever till the verification statement of the Complainant is recorded.

7. In view of this, Criminal Miscellaneous Application No.22/2003 is allowed. The Order impugned in this application is quashed and set aside. The Complainant to appear before the learned Judicial Magistrate, First Class, Panaji, on 29th April, 2003. The learned Judicial Magistrate, First Class, Panaji, shall

record the verification statement either on that day or any other day subsequent thereafter which may be fixed by the learned Judicial Magistrate, First Class, Panaji. The assurance on behalf of the Complainant that no adjournments would be sought is accepted. Application is allowed on the above terms with no order as to costs. Records and Proceedings be remitted immediately to the learned Trial Court.

P. V. HARDAS, J.

RD.